

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF REGULATIONS FOR THE AVAILABILITY OF CALIFORNIA MOTOR VEHICLE SERVICE INFORMATION

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider the adoption of regulations regarding the availability of motor vehicle service information in California.

DATE: December 13, 2001

TIME: 9:00 am

PLACE: California Air Resources Board
Auditorium
9530 Telstar Avenue
El Monte, CA 91731

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., December 13, 2001, and may continue at 8:30 a.m., December 14, 2001. This item might not be considered until December 14, 2001. Please consult the agenda for the meeting, which will be available at least 10 days before December 13, 2001, to determine the day on which this item will be considered.

The facility is accessible to persons with disabilities. If accommodation is needed, please contact the Clerk of the Board at (916) 322-5594 or Telecommunications Device for the Deaf (TDD) (916) 324-9531 or (800) 700-8326 for TDD calls from outside the Sacramento area, by November 29, 2001.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected:

Adoption of the following sections of title 13, California Code of Regulations, and the documents incorporated by reference therein: division 3, chapter 1, Motor Vehicle Pollution Control Devices; article 2, Approval of Motor Vehicle Pollution Control Devices (New Vehicles), section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty and Medium-Duty Vehicles, and the incorporated “Society of Automotive Engineers (SAE) Recommended Practice J1930, May 1998” and draft “SAE J2534, Revision 5.2, September 2001.”

Adoption of sections 60060.1 through 60060.34, title 17, California Code of Regulations (CCR): chapter 1, subchapter 1.25, article 2.5, Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Vehicles.

Background

The California Clean Air Act as codified in Health and Safety Code section 43105.5¹ directs the ARB to develop regulations that require manufacturers of 1994 and later model year passenger cars, light-duty trucks and medium-duty vehicles to make available emission-related service information to the automotive repair industry. The ARB staff is proposing regulations to implement these service information requirements, and the process for administrative review of Executive Officer determinations of non-compliance

In drafting the proposal, the ARB staff met with the United States Environmental Protection Agency (U.S. EPA), motor vehicle manufacturers, aftermarket parts manufacturers, trade associations and other interested parties in various meetings and via phone calls. Staff issued two mail-outs (reference: #MSO 2001-04 and #MSO 2001-09) that respectively presented staff's initial and revised draft proposals. Numerous written comments from the aforementioned parties were submitted to the ARB in response to the two mail-outs and were considered in the development of the final proposal. The staff also held a public workshop on April 18, 2001, to discuss the first draft proposal.

Comparable Federal Regulations

The United States Environmental Protection Agency (U.S. EPA) promulgated regulations regarding the availability of service information in 1995.² The regulations require that beginning with the 1994 model year, motor vehicle manufacturers were to make available to the aftermarket service and repair industry emission-related service information. To this end, the regulation required the manufacturers to list all such information on an online database called FedWorld. Recently, on June 8, 2001, the U.S. EPA proposed in a Notice of Proposed Rulemaking (NPRM) amendments to the regulations to further improve availability of service information. The amendments would require motor vehicle manufacturers to directly provide service information for 1996 and later vehicles on individual Internet websites rather than listing the information on FedWorld. As of the date of publication of this Notice (October 26, 2001), the proposed federal amendments have not become final. To promote consistency between federal and state provisions, it is staff's intent to harmonize its regulations with the proposed amendments of the U.S. EPA to the extent possible. Minor differences

¹ Health and Safety Code section 43105.5 was created by Senate Bill 1146 (SB1146), enacted September 30, 2000.

² 40 Code of Federal Regulations, part 86, section 86.094-38.

exist in regards to pricing determinations, Internet performance reporting, and training materials, but none of these differences will cause conflict in the implementation of either proposal.

Staff Proposal

As required by Health and Safety Code section 43105.5, staff proposes that the regulations apply generally to 1994 and later passenger cars, light-duty, and medium-duty vehicles certified to California's On-Board Diagnostic II (OBD II) requirements (title 13, California Code of Regulations, section 1968.1). Currently, section 1968.1(k)(2.1) of the OBD II regulation requires motor vehicle manufacturers to comply with limited service information provisions. It is staff's intent that these regulations, to the extent that they are effective and operative, will supersede those provisions. In accordance with the requirements of Senate Bill 1146 (SB1146), the proposal includes the following:

- *Availability of emission-related service information*

The proposed regulation requires the availability of all emission-related service information provided to franchised dealerships, including service manuals, technical service bulletins, and training materials. In addition, motor vehicle manufacturers must also provide on-board diagnostic system description information for vehicles manufactured from the 1996 model year. The required information would be available to anyone engaged in the business of motor vehicle service and repair, or in the manufacture or remanufacture of emission-related motor vehicle parts.

- *Immobilizer information*

The staff's proposal would require manufacturers to provide initialization procedures used by dealerships for vehicles equipped with integrated anti-theft systems (known as immobilizers) when such procedures are necessary for installation of on-board computers or in making other emission-related repairs. A provision to permit additional time for full compliance with this requirement, through the 2004 model year, is proposed in cases where the manufacturer would need to make design changes to the immobilizer system in order to ensure that disclosure of the procedures will not compromise vehicle security.

- *Internet availability*

Consistent with the dictates of Health and Safety Code, section 43105.5, the proposal would require motor vehicle manufacturers to make emission-related service information available on the Internet in full text. The information must be maintained online for a minimum of 15 years. Manufacturers that produce less than 300 vehicles annually in California could choose to use another viable business mean(s) for information access.

- *Availability of diagnostic tools and reprogramming equipment*

Motor vehicle manufacturers would be required to make available the same diagnostic tools they provide to their dealerships, and to provide specific information that will allow makers of generic diagnostic tools to incorporate the same diagnostic capabilities. Further, manufacturers would be required to make the on-board computer reprogramming equipment that they provide to dealerships available to independent service providers as well. For 2004 and later model year vehicles, the regulation would require manufacturers to standardize the mechanism by which on-board computers are reprogrammed according to Society of Automotive Engineers' Recommended Practice J2534. This would eliminate the need for manufacturer specific reprogramming tools.

- *Requirements for fair, reasonable, and nondiscriminatory pricing*

Motor vehicle manufacturers would be required to make the specified information and tools available at a "fair, reasonable, and nondiscriminatory price." In enforcing compliance with this requirement, the ARB would consider the criteria set forth in the definition of the term. These criteria allow the vehicle manufacturer to recover the costs of making the information available, but also consider the requesting person's ability to afford the information.

- *Implementation Dates*

Compliance with the requirements would begin 180 days after the effective date of these regulations or January 1, 2003, whichever is later for vehicle models introduced into commerce on or before the effective date of the regulation. For vehicle models introduced into commerce after the effective date of the regulation, compliance would be required 180 days from the date of introduction of the vehicles, or concurrently with availability of the information covered by these regulations to franchised dealerships, whichever occurs first.

- *Trade secret disclosure*

Staff's proposal would not direct motor vehicle manufacturers to divulge service information that can be classified as trade secret material pursuant to the Uniform Trade Secret Act contained in Title 5 of Part 1 of Division 4 of the California Civil Code. The proposal would set forth procedures for manufacturers and covered persons to attempt to informally resolve the release of disputed material. If such dealings are unsuccessful, the motor vehicle manufacturer would need to petition the California superior court for declaratory relief.

- *Compliance Review Procedures*

Motor vehicle manufacturers would be required annually to provide the Executive Officer with reports that adequately demonstrate that the performance of their individual Internet websites meets the requirements of subsection (e)(2). The Executive Officer could require manufacturers to submit additional reports upon request. The reports would include any information reports required by the United States Environmental Protection Agency under the Federal Service Information Rule.

The proposal would give the Executive Officer authority to conduct periodic audits of manufacturer websites to determine compliance with the provisions of the regulation. In addition, the proposal would allow covered persons the right to request the Executive Officer to conduct an audit of a specific manufacturer that it believes to be in noncompliance with the regulations. If, after conducting an audit, the Executive Officer determines that a manufacturer is not in compliance, the Executive Officer would be required to issue a notice to comply against the manufacturer.

- *Administrative Hearing Procedures*

Upon being served with a notice to comply, a manufacturer would be required to either submit a compliance plan to the Executive Officer or request an administrative review hearing to contest the noncompliance. To properly enforce the regulations, the proposed procedures would further require that the Executive Officer seek administrative review of certain determinations that have found a manufacturer to be in noncompliance. Specifically, the Executive Officer would be required to seek compliance orders against a manufacturer who has (1) been issued a notice to comply and has failed either to request administrative review of the notice or, in the alternative, to submit a compliance plan; (2) filed a compliance plan that the Executive Officer has found to be unacceptable; or (3) failed to comply with the terms of a compliance plan that had been accepted by the Executive Officer.

Consistent with Health and Safety Code section 43105.5(e) and (f), the staff is proposing that Executive Officer determinations regarding manufacturer noncompliance be subject to administrative hearing procedures that would be codified at Title 17, CCR section 60060 et seq. The procedures would closely parallel other administrative hearing procedures that have been adopted by the ARB. (See Title 17, CCR section 60055 through 60075.45.) The proposed procedures would include, among other things, general procedural requirements regarding a party's right to representation and reasonable accommodation, and the filing of motions. Provisions would also cover the authority of hearing officers to conduct hearings and procedures for the filing of requests for review. Other provisions would set forth prehearing procedures, including the right to discovery and procedures for the conduct of hearings, including, introduction of evidence.

Finally, the proposed procedures would set forth requirements for the issuance of decisions and orders by the hearing officer, including penalty assessments, and the right of parties to seek judicial review of a hearing officer's final decision.

- *Penalties*

As provided by Health and Safety Code section 43105.5(f), the proposed regulations would allow the administrative hearing officer to assess penalties, not to exceed \$25,000 per day per violation, for failure to take corrective action after a compliance order has been issued by the hearing officer. Such penalties could be assessed if corrective action is not undertaken within 30 days (or such longer time that the hearing officer deems appropriate) from the date of the compliance order. For purposes of this section, all issues of noncompliance that are covered by the compliance order would be considered a single violation.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal, and supporting technical documentation. The staff report is entitled: "Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Adoption of Regulations for the Availability of California Motor Vehicle Service Information."

Copies of the ISOR and full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations, may be obtained from the ARB's Public Information Office, Environmental Services Center, 1001 "I" Street, First Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (December 13, 2001).

Upon its completion, the Final Statement of Reason (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons: Dean Hermano, Air Resources Engineer, at (626) 459-4487, or Allen Lyons, Chief, New Vehicle/Engine Programs Branch, Mobile Source Operations Division at (626) 575-6918.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Marie Kavan, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the agency contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at: <http://www.arb.ca.gov/regact/cmvsip/cmvsip.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESS AND PERSONS AFFECTED

The determinations of the Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined that the proposed regulatory action will create administrative costs, as defined in Government Code section 11346.5(a)(6), to the ARB and to the Department of Consumer Affairs. The ARB is expected to incur ongoing costs of approximately \$200,000 per year to implement the regulation and enforce compliance. The Department of Consumer Affairs is expected to incur costs of less than \$75,000 per year as the Bureau of Automotive Repair is required through 2009 to assist the ARB in reporting to the Legislature on the effectiveness of these regulations. Costs would not be created to any other state agency, or in federal funding to the state. The regulation will not create costs or mandates to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies.

The Executive Officer has also made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Executive Officer has further determined that there should be insignificant, potential direct cost impacts, as defined in Government Code section 11346.5(a)(9), on representative private persons or businesses acting in reasonable compliance with the proposed action. The proposed service information regulation should directly affect approximately 34 motor vehicle manufacturers. Although manufacturers would incur costs to comply with the regulation, most, if not all of these costs should be recoverable through the sale of service information and tools. The regulation would likely have no or a small positive cost impact on the thousands of independent service repair facilities and aftermarket part manufacturers that do business in California because of the greater availability of service information and tools. The proposed regulation may indirectly have adverse cost impacts on franchised dealerships in California that may lose some repair business to independent service facilities.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the elimination of jobs or elimination of existing businesses within the State of California.

The Executive Officer has determined that the proposed action may possibly create some jobs, create new businesses, or promote the expansion of businesses currently doing business within California. An assessment of the economic impacts of the proposed regulatory action can be found in the staff report. The Executive Officer has further determined, pursuant to Government Code sections 11346.3(c) and 11346.5(a)(11), that the regulatory requirements for motor vehicle manufacturers to file reports are necessary for the health, safety, or welfare of the people of the state.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small business.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has been otherwise identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than **12:00 noon, December 12, 2001**, and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: cmvsip@listserv.arb.gov and received at the ARB by no later than **12:00 noon, December 12, 2001**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB no later than **12:00 noon, December 12, 2001**.

The Board requests, but does not require, 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The

ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY

This regulatory action is proposed under the authority granted to the ARB in California Health and Safety Code sections 39600, 39601, 43018, and 43105.5. This action is proposed to implement, interpret or make specific sections 39027.3, 43104, 43105.5, and 44011.6, Health and Safety Code; sections 11181, 11182, 11184, 11189, 11425.30, 11425.40, 11430.70-11430.80, 11435.25, 11435.30, 11435.55, 11440.30, 11455, 11455.30, 11500, 11507.6, 11509, 11512 and 11525, Government Code; sections 451, 452, 751, 915(b), Evidence Code; sections 395, 1013, 1013a, 1094.5, California Code of Civil Procedure; 13, CCR, section 1969; Mathews v. Eldridge, 424 U.S. 319 (1976).

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public adequately has been placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, for at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, 1001 "I" Street, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: October 16, 2001